HIGH COURT OF UTTARANCHAL AT NAINITAL

Criminal Misc. Writ Petition No. 298 of 2006

Umesh Doggal
S/o Shri Sudarshan Kumar Dugal
R/o Gali No. 15 Krishana Nagar Roorkee
P.S. Gangnehar, Roorkee
District Haridwar .....Revisionist

Versus

1. State of Uttaranchal
2. Judge Family Court
   Roorkee, District Haridwar
3. Smt. Mohani Duggal @ Mohani Gupta
   W/o Shri Umesh Duggal
   D/o late Shri Suresh Chandra Gupta
   R/o 193 Kabadi Bazar
   P.S. Kotwali Roorkee
   District Haridwar .....Respondents

Hon'ble J. C. S. Rawat, J.

1. Heard Sri Manish Arora learned counsel for the revisionist and Sri Lalit Verma A.G.A. for the State.

2. The petition under section 226/227 of the Constitution of India has been filed for setting aside the impugned order dated 21.01.2006 passed by the Judge Family Court, Roorkee, District Haridwar in case No.38/2005 Smt. Mohani Vs. Umesh Duggal under section 125 Cr.P.C., whereby the husband-Umesh Duggal was directed to pay Rs. 1000/- p.m. as interim maintenance to his wife-Smt. Mohani Duggal.

3. It is admitted that that the marriage was solemnized between the revisionist and Smt. Mohani Duggal on 05.04.20085 according to Hindu customs. It is not in dispute that the parties are living separately and their relations are strained. The respondent No.2-Smt. Mohani Duggal filed an application under section 125 Cr.P.C. in the court of Judge Family Court, Roorkee

alleging therein that the revisionist has neglected to maintain her and she is residing in the parental house. It has been alleged that no maintenance has been given by the revisionist. The revisionist contested the case by filling the written statement. The revisionist has denied the averment made in the application filed by his wife that he is earning Rs. 12,000/- per month. The revisionist has also alleged that his wife is earning a sum of Rs.3000/-. It was further alleged that the revisionist is a servant in a tea shop, but he has not alleged that how much amount he is earning from the tea shop. During the pendency of the said application, the respondent No.3-wife filed an application for interim maintenance against the revisionist-husband. The court below has awarded a sum of Rs.1000/- p.m. as interim maintenance. Feeling aggrieved by this said order, the revisionist preferred the present petition.

4. Learned counsel for the revisionist contended that the respondent No.3-Smt. Mohani Duggal is earning Rs.3000/- p.m. and the revisionist is a servant in a tea shop. Learned A.G.A. refuted the contention. The revisionist-husband had neglected to maintain his wife. It is an admitted case that the revisionist-husband is an able-bodied person. There is no evidence on record that the revisionist is handicapped person. The revisionist is an able-bodied person and he can earn his livelihood and maintain his wife. Being an able-bodied person the revisionist can earn the minimum wages. It is admitted that he is working in a tea stall. Keeping in view of the circumstances, the interim maintenance awarded by the court below is not an exorbitant. Therefore, I do not find any force in the contention of the learned counsel for the revisionist.

5. Learned counsel for the revisionist further contended that the court below has awarded the interim maintenance from the date of filing of application and not from the date of its order. It was further contended that no reason has been given for awarding the interim maintenance from the date of application filed by the wife.

6. Learned Counsel for the revisionist contended that if the court below was intended to award the interim maintenance from the date of application, the court should have recorded its reasons for doing so. Section 125(2) Cr.P.C. provides as under:

> *"Any such allowance for the maintenance or interim maintenance and expenses for proceeding shall be payable from the date of order, or, is so ordered, from the date of the application for maintenance or interim maintenance and expenses of proceeding, as the case may be."*

7. From perusal of the sub-section 2 of section 125 Cr.P.C. reveals that in the normal circumstance the maintenance must be given from the date of order and in case of extraordinary circumstances it may also be ordered to be paid from the date of filing of application. The court below must disclose and discuss about such circumstances in which the interim maintenance was awarded from the date of filing of application. No other inference is permissible from the language of sub-section 2. The court below had not given any reason for allowing the interim maintenance from the date of application. As such, I am inclined to accept the

contention of the applicant. Therefore, the impugned order is modified to the extent that the husband-Umesh Duggal will pay the interim maintenance from the date of impugned order and not from the date of application.

8. The petition is dismissed accordingly.

(J.C.S. Rawat, J.)

Dated 28.03.2006
LSR